



Serial No. 09/954,604  
Attorney Docket No: RPC 0467 D  
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*3637*

## THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Gerald R. Koefelda, et al. EXAMINER: Chen, José V.

SERIAL NO.:09/954,604

GROUP ART UNIT: 3637

FILED: September 17, 2001

FOR: Nestable Pallet

ATTY DOCKET NO.: RPC 0467 D

### APPEAL BRIEF

Mail Stop Appeal Briefs-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted pursuant to the Notice of Appeal filed February 26, 2004.

#### Real Party in Interest

The real party in interest is Rehrig Pacific Company, the Assignee of the entire right and interest in this application by assignment recorded for the parent patent application at Reel 010349, Frame 0152.

#### Related Appeals and Interferences

There are no related appeals and interferences.

#### Status of the Claims

All of the pending claims, claims 14-43, are rejected and appealed.

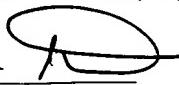
#### Status of Amendments

No Amendment After Final was filed.

#### **CERTIFICATE OF MAIL**

I hereby certify that the enclosed Appeal Brief (in triplicate) and fee are being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 26, 2004.

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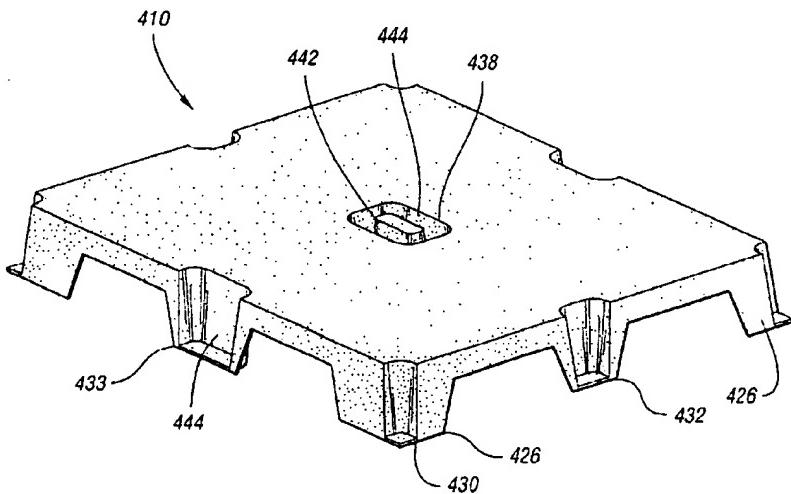
  
Konstantine J. Diamond

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### Summary of the Invention

Pallets that nest together allow such pallets to be easily stored and transported when not in use. Nestable pallets used in industry today typically have openings in their upper surface that receive corresponding shaped feet of a similar nestable pallet. While these openings provide a means for nesting pallets together, there are also many disadvantages that accompany these openings. For example, current nestable pallet designs may not be used to ship products in bulk without a container because the product, depending on its size, may fully or partially fall into the upper surface openings. Even if a cardboard slip sheet is positioned between the product and the openings, under load the slip sheet is still weakest in the areas of the opening, particularly when such pallets are stacked upon each other during use. Thus, the weight and load of the upper pallets may cause the slip sheets to fail in these weakened areas, causing the product stacked on the lower pallets to push through the slip sheet and end up in the openings.

A pallet 410 according to one embodiment of the present invention is shown in Figure 36 (reproduced below). The pallet 410 includes a deck member having an upper surface without the openings for nesting found in prior art pallets. Instead, foot portions extend downwardly from the periphery of the deck member. The peripheral foot portions include side foot portions 432, 433 and corner foot portions 430. Each of the peripheral foot portions 430, 432, 433 has an outwardly directed recess 444 extending to the upper surface of the deck member for receiving a corresponding foot portion of a like pallet disposed thereabove when in a nested orientation.



*Fig. 36*

The pallet may also include a non-peripheral foot portion 438 extending downwardly from the deck member. To avoid the aforementioned problems of the prior art, the non-peripheral foot portion 438 includes an upright member 442 extending upwardly from an inner surface of the non-peripheral foot portion 438. Thus, the non-peripheral foot portion 438 can receive a non-peripheral foot portion of a nesting pallet stacked thereon, while providing extra support for the goods stacked on the upper surface.

### Issues

- I) The final rejection of claims 14-37, 42 and 43 under 35 U.S.C. §103(a), as being unpatentable over Bredal et al. in view of Elder et al. is improper.
- II) The final rejection of claims 38-41 under 35 U.S.C. §103(a), as being unpatentable over Bredal et al. in view of Elder and Mathieu et al. is improper.

### Grouping of Claims

The rejections of claims 14-43 are contested. Claims 14-43 do not stand or fall together.

For purposes of this appeal only and based upon the underlying rejections being appealed, Appellant groups the claims as follows:

I) For the rejection under 35 U.S.C. §103(a), as being unpatentable over Bredal et al. in view of Elder et al., claims 14-37, 42 and 43 do not stand or fall together. The claims are grouped as follows:

Claims 15 and 25 (and claims depending therefrom) stand or fall together, but do not stand or fall with the other claims. Claims 15 and 25 specify a side peripheral foot portion (or support member or foot member). Because the other claims do not recite a side peripheral foot portion, which is also not shown in the prior art, claims 15 and 25 and claims depending therefrom are independently patentable.

Claims 14 and 30 (and claims depending therefrom) stand or fall together, but do not stand or fall with the other claims. Claims 14 and 30 recite a non-peripheral foot portion. Because the other claims do not recite a non-peripheral foot portion, which is also not shown in the prior art, claims 14 and 30 and claims depending therefrom are independently patentable.

Claim 24 and claims depending therefrom recite both the non-peripheral foot member and the side peripheral support member. Because the other claims do not recite both of these elements,

and because the cited prior art does not suggest either of these, claims 24 and claims depending therefrom are independently patentable.

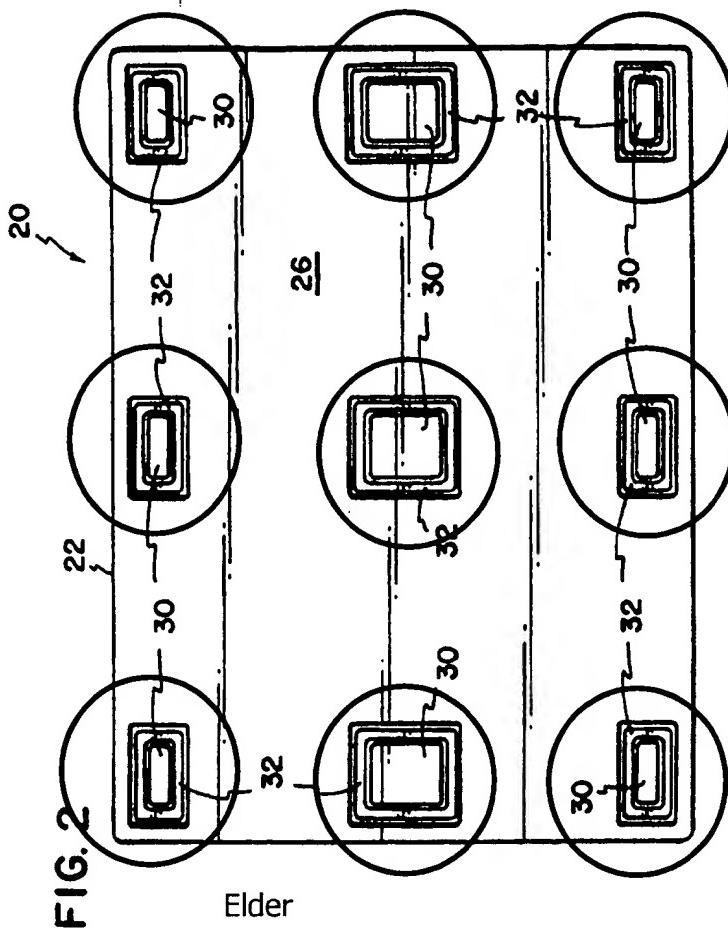
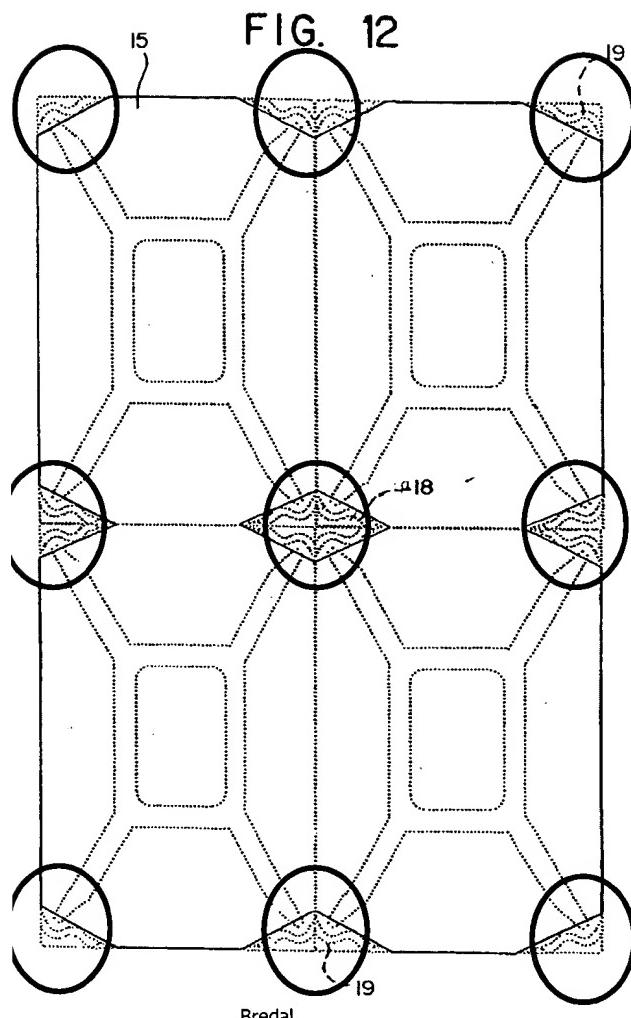
II) For the rejection under 35 U.S.C. §103(a) as being unpatentable over Bredal et al. in view of Mathieu, claims 38-41 stand or fall together.

### Argument

#### Rejection of claims 14-37 and 42-43 over Bredal in View of Elder

The Examiner has rejected claims 14-37 and 42-43 as obvious over Bredal (US 6,234,088) in view of Elder (5,606,921). Bredal discloses a single sheet pallet manufactured with dimensions corresponding to one-quarter of the area of a standardized pallet. (col. 2, lines 46-49). Four of the quarter-sized pallets are arranged two-by-two to support a load. (Figure 12).

The Examiner argues that it would be obvious to modify the quarter-pallets of Bredal to include a non-peripheral foot or a side peripheral foot. The Examiner offers as “suggestion” or “motivation” the fact that a non-peripheral foot and side peripheral feet are both shown in the full-size pallet of Elder. However, because the pallets in Bredal are one-quarter the size of the pallets of Elder, four Bredal quarter-pallets used together in the manner intended already have the same arrangement of feet as the full-size pallet of Elder (in Bredal, the four feet together in the center correspond to a single center foot in Elder). This is demonstrated in the drawings from Elder and Bredal below (circles added):



Therefore, there is no motivation for adding a non-peripheral foot or a side peripheral foot to the Bredal pallet.

The Examiner appears to have shifted the burden of proof to the Applicant on the issue of obviousness, by saying, "the size of the pallet would not deter one of ordinary skill in the art to use known knowledge and engineering principles." Applicant is not required to prove that one of ordinary skill in the art would be *deterrred* from the claimed invention. Rather, the Examiner must point to some suggestion in the prior art (or in the general knowledge of those skilled in the art) for making the proposed modification. The size of the Bredal quarter-pallets and the stated intended use of the Bredal quarter-pallets negate the motivation proposed by the Examiner.

Rejection of claims 38-41 over Bredal in View of Elder and Mathieu

The Examiner has rejected claims 38-41 as obvious over Bredal in view of Elder and in further view of Mathieu (US 1,408,114). Claim 38 recites that the cutout is substantially symmetrical about a diagonal extending from a centerpoint of the top deck to the one corner of the top deck. The Examiner admits that the legs of Bredal are not symmetrical about the specified diagonal, but states that it would be obvious to modify Bredal in view of Mathieu. The Examiner's motivation for the proposed modification is that it would "aid in stacking or nesting." However, this hypothetical motivation does not exist because the quarter-pallets of Bredal are already stackable and nestable, as is shown in Figure 9 of Bredal. The cutouts do not need to be symmetrical about the diagonal in order to stack or nest. Therefore, claims 38-41 are not obvious over Bredal and Mathieu.

Closing

For the above reasons, all of the pending claims should be allowed. A check in the amount of \$440 is enclosed, including \$330 for the Appeal Brief fee and \$110 for a one-month extension. If any additional fees or extensions are due, please charge Deposit Account No. 50-1984.

Respectfully submitted,

Dated: MAY 26, 2004

  
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The PTO did not receive the following  
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## Claims Appendix

1-13. (Cancelled)

14. A nestable pallet comprising:
  - a deck member having an upper surface;
  - a plurality of integrally formed peripheral foot portions extending downwardly from the deck member and disposed about the periphery of the deck member, wherein each of the peripheral foot portions has an outwardly directed recess extending to the upper surface of the deck member for receiving a corresponding foot portion of a like pallet disposed thereabove when in a nested orientation; and
  - a non-peripheral foot portion extending downwardly from the deck member.
15. The nestable pallet of claim 14, wherein the plurality of peripheral foot portions includes a side peripheral foot portion extending downwardly from a substantially centered position along a side edge of the deck member.
16. The nestable pallet of claim 14, wherein the plurality of peripheral foot portions includes a corner peripheral foot portion.
17. The nestable pallet of claim 14, wherein at least one of the outwardly directed recesses is vertically disposed along a corner of the pallet.
18. The nestable pallet of claim 14, wherein at least one of the outwardly directed recesses is vertically disposed along a side of the pallet.
20. The nestable pallet of claim 14, wherein the deck member has a non-peripheral opening corresponding to the non-peripheral foot portion.
21. The nestable pallet of claim 14, wherein the non-peripheral foot portion has an inner surface and at least one upright member projecting upwardly therefrom.

22. The nestable pallet of claim 14, wherein the non-peripheral foot portion is centrally disposed along the deck member.

23. The nestable pallet of claim 14, wherein the peripheral foot portions include a bottom edge to assist in defining the outwardly directed recess.

24. A nestable pallet comprising:

a deck member having an upper surface and including a plurality of downwardly extending support members extending therefrom, the support members defining a U-shaped cross-section, the support members further defining correspondingly shaped pockets for nestably receiving the support members of a similar pallet disposed thereabove, the plurality of support members including at least one corner support member extending downwardly from a corner of the deck member, at least one side peripheral support member extending downwardly from a substantially center position along a side edge of the deck member and at least one non-peripheral support member extending downwardly from a substantially centered position of the deck member, the top deck including a non-peripheral opening extending into the non-peripheral support member, the non-peripheral support member including at least one upright member projecting upwardly therefrom.

25. A nestable pallet comprising:

a top deck having an upper surface and a periphery having corners and side edges, and at least one foot member extending downwardly from a side edge of the top deck between an adjacent pair of corners, the at least one foot member having a cutout formed in its exterior surface extending to the upper surface of the top deck, wherein the cutout is arranged to receive a corresponding foot member of another pallet positioned thereabove in a nested orientation.

28. The nestable pallet of claim 25, wherein the cutout is directed outwardly from the top deck.

29. The nestable pallet of claim 25, wherein the cutout is vertically disposed along a corner of the pallet.

30. The nestable pallet of claim 25, further comprising at least one non-peripheral foot member extending downwardly from the top deck.
31. The nestable pallet of claim 30, wherein the top deck has a non-peripheral opening extending into the non-peripheral foot member.
32. The nestable pallet of claim 30, wherein the non-peripheral foot member has at least one upright member projecting upwardly therefrom.
33. The nestable pallet of claim 30, wherein the non-peripheral foot member is centrally disposed along the top deck.
34. The nestable pallet of claim 14, wherein the outwardly directed recess of the foot portion defines a corresponding inwardly directed projection, the recess receiving a corresponding projection of the like pallet disposed thereabove when in the nested orientation.
35. The nestable pallet of claim 14, wherein the foot portions have a single-wall construction.
36. The nestable pallet of claim 25, wherein the cutout of the foot member defines a corresponding inwardly directed projection, the cutout receiving a corresponding projection of the another pallet positioned thereabove when in the nested orientation.
37. The nestable pallet of claim 25, wherein the foot member has a single-wall construction.

38. A nestable pallet comprising:

a top deck having an upper surface and a peripheral edge including side edges and corners, and at least one foot member extending downwardly from one of the corners of the top deck, the at least one foot member having an exterior surface and an interior surface, the exterior surface having a cutout formed therein, the cutout extending vertically to the upper surface of the top deck and directed outwardly from the corner of the top deck such that the cutout is substantially symmetrical about a diagonal extending from a centerpoint of the top deck to the one corner of the top deck, the cutout defining a projection on the interior surface of the foot member, wherein the cutout is arranged to receive a corresponding projection of an other pallet positioned thereabove when in a nested orientation.

39. The nestable pallet of claim 38, wherein the foot member has a single-wall construction.

40. The nestable pallet of claim 38 further including a plurality of the foot members, each positioned in one of the corners of the top deck and each having the cutout symmetrical about a diagonal extending from the centerpoint of the top deck to the respective corner.

41. The nestable pallet of claim 40 wherein the top deck and the plurality of foot members are all integrally-molded in a unitary construction.

42. The nestable pallet of claim 14 wherein the deck member, the plurality of peripheral foot portions and the non-peripheral foot portion are all integrally-molded in a unitary construction.

43. The nestable pallet of claim 24 wherein the deck member and the plurality of support members are all integrally-molded in a unitary construction.